

**UNITED STATES DISTRICT COURT
FOR THE STATE OF DELAWARE**

MP VISTA, INC., HABIB PETROLEUM	:	
WARREN'S SHELL, INC., INDIVIDUALLY	:	No. _____
AND ON BEHALF OF THOSE	:	
SIMILARLY SITUATED	:	
	:	
VERSUS	:	
	:	
MOTIVA ENTERPRISES, LLC AND SHELL	:	
OIL COMPANY	:	

COMPLAINT- CLASS ACTION

NOW INTO COURT, through undersigned counsel and pursuant to Federal Rule of Civil Procedure 23 come MP Vista, Inc., Habib Petroleum, Warren's Shell, Inc., Individually And On Behalf Of Those Similarly Situated, all of which ARE Florida corporations who individually and on behalf of those similarly situated represent as follows:

I.--INTRODUCTION

THE plaintiffs are retail channel partners of the defendants who were directed to close their fuel pumps on May 26, 2004 after Motiva discovered the gasoline it refined at its Norco Refinery in Louisiana and distributed in Florida, Mississippi, and Louisiana was contaminated with trace amounts of elemental sulfur.

II.--DEFENDANTS

Defendants here, Motiva Enterprises, LLC and Shell Oil Company, are a limited liability company and a business corporation, respectively, both of which are domiciled at 1209 Orange Street, Wilmington, Delaware 19801.

III.--JURISDICTION

This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act (CAFA) 28 USC 1332(d)(2) because this is a class action in which there is at least minimal diversity and the matter in controversy exceeds the sum of Five Million Dollars(\$5,000,000.00) exclusive of interest and costs.

IV.--VENUE

Venue is proper pursuant to 28 USC 1391(a) because both defendants are domiciled in this District.

V.--CLASS DEFINITION

The plaintiffs propose to proceed on behalf of the following class:

The channel partners of Motiva Enterprises, LLC and Shell Oil Company directed by the defendants on May 26, 2004 to close their fuel pumps after the Motiva Refinery at Norco, Louisiana discovered the gasoline it refined and distributed was contaminated with elemental sulfur and who suffered damages as a result thereof.

VI.-- FACTS

The defendants notified the plaintiffs and the putative class they seek to represent on or about May 26, 2004 that the Norco Refinery of Motiva Enterprises LLC has refined and distributed gasoline to its Shell Oil Company retail and wholesale channel partners in Florida, Mississippi and Louisiana which was unfit for its intended use do to contamination from trace elemental sulfur.

VII.

The identified notification by the defendants included a mandatory instruction to the plaintiffs and all putative class member to cease fuel sales.

VIII.

The plaintiffs and the putative class, they seek to represent, operate car washes, garages, miscellaneous, ancillary income streams and/or convenience stores, together with offering defendants' fuel products for sale.

IX.

The plaintiffs as a result of the mandatory cessation of fuel sales ordered by the defendants suffered damages to the tangible and non-tangible aspects of their business.

X. COUNT 1- NEGLIGENCE

The plaintiffs adopt by reference paragraphs I-IX as if repeated herein, in extensor.

XI.

The refining and distribution of the contaminated fuel by the defendants, proximately resulted in damages to the plaintiffs, due to the defendants' imprudence and lack of skill. See La. C.c. art 2316.

XII.—COUNT 2- BREACH OF WARRANTY

The plaintiffs adopt by reference paras. I-IX as if repeated herein, in extenso.

XII.

The defendants' distribution of sulfar contaminated fuel to the plaintiffs and all of the putative members, breached the implied warranties of fitness for use and merchantability as provided by the Uniform Commercial Code.

XIII.—NUMEROSITY

This action is maintainable as a class action because the size of the class, upon information and belief, is so numerous that joinder of all members would be impracticable. This level of numerosity is better handled through the class action procedure.

XIV.—COMMON QUESTIONS OF LAW AND FACT

Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether or not the cessation of fuel sales during Memorial Day weekend travel detrimentally impacted the plaintiffs businesses.
- b. Whether or not the sale/distribution of contaminated fuel breached implied warranties under the UCC.

XV.—CLASS REPRESENTATIVES

Plaintiffs will fairly and adequately represent and protect the interest of the class. Plaintiffs, the class representatives herein, have retained counsel who are skilled and experienced in the prosecution of class action litigation, and who will adequately handle this action in an expeditious manner to the best interests of all members of the class.

XVI.—SUPERIORITY

A class action is a superior vehicle for the fair and efficient adjudication of this litigation, because individual joinder of all class members is impracticable and would be expensive and

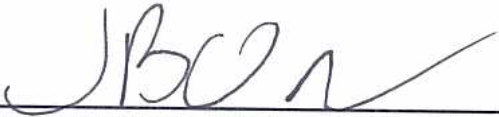
unduly burdensome on individual class members, defendants, and the court system. Additionally, because of the disparity of resources available to individual class members, prosecution of separate actions would work a financial hardship on many class members. Finally, a class certification is appropriate because the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would be as practical matter be dispositive of the interests of the other members not parties to the adjudications, and would substantially impair their ability to protect their interests.

XVII.

The plaintiffs pray for a trial by jury.

WHEREFORE, the plaintiffs, MP Vista, Inc., Habib Petroleum, Warren's Shell, Inc. Individually And On Behalf Of Those Similarly Situated, pray for Judgment against the defendants, Motiva Enterprises, LLC and Shell Oil Company, together with costs and attorney fees.

Respectfully submitted,



JONATHAN B. O'NEILL, ESQ. Bar I.D. 4442
MORTON R. KIMMEL, ESQ. Bar I.D. 132
MICHAEL D. BEDNASH, ESQ. Bar I.D.2948
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(302) 392-5277
Attorneys for Plaintiffs

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <i>MP Vista, Inc., Habib Petroleum, Warren's Shell, Inc., Individually and on behalf of those similarly situated.</i> (b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <i>Kimmel, Carter, Roman, & Peltz, P.A.</i> <i>P.O. Box 1070</i> <i>Boggs, DE 19701 (302) 362-2000</i>	DEFENDANTS <i>Motiva Enterprises, LLC and Shell Oil Company</i> County of Residence of First Listed Defendant <i>New Castle (DE)</i> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS <table style="width: 100%;"> <tr> <td style="width: 50%;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="width: 50%;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table> CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability
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| **FORFEITURE/PENALTY** ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other **LABOR** ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act | **BANKRUPTCY** ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 **PROPERTY RIGHTS** ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark **SOCIAL SECURITY** ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) **FEDERAL TAX SUITS** ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609 |
| **OTHER STATUTES** ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes | |

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgement	VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): <i>28 USC 1332(d)(2)</i> Brief description of cause: <i>Damages to tangible and non-tangible aspects of plaintiffs' businesses.</i>
VII. REQUESTED IN COMPLAINT: <input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ <i>5,000,000.00</i> + CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____	

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

07-99

Civil Action No. _____

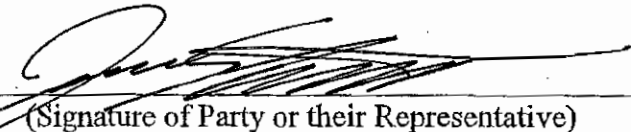
ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

2/21/07

(Date forms issued)

X 
(Signature of Party or their Representative)

X Susan Stowell
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action